

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

MUSCOGEE (CREEK) NATION,  
a federally recognized Indian Tribe,

Plaintiff,

vs.

Case No. 23-CV-490-SH

CITY OF TULSA; G.T. BYNUM, in his official  
capacity as Mayor of City of Tulsa; WENDELL  
FRANKLIN, in his official capacity as Chief of  
Police, Tulsa Police Department; and JACK  
BLAIR, in his official capacity as City Attorney  
for City of Tulsa,

Defendants.

**DEFENDANTS' RESPONSE TO  
MOTION TO INTERVENE OF BRIAN WAYNE PATTERSON**

The Motion to Intervene by Brian Wayne Patterson should not be ruled upon until the Court rules on the City's Motion to Dismiss filed herein. Doc. 28 (filed Dec. 8, 2023). Mr. Patterson seeks to challenge unnamed convictions but is currently incarcerated on a felony conviction for Robbery First Degree, Larceny of Automobile, Eluding a Police Officer and other crimes in Tulsa County District Court CF-2013-5464 wherein he was sentenced Life in prison plus 30 years after a jury found him guilty. *See Patterson v. Whitten*, 2018 WL 6840153 (N.D. Okla. 2018). Mr. Patterson asserted Indian Country jurisdiction before this Court which dismissed his federal habeas petition for lack of exhaustion in State Court. *Id.* Mr. Patterson's jurisdictional challenge was rejected by the State Court due to the lack of retroactivity of the *McGirt* decision on April 4, 2022. See Oklahoma Court of Criminal Appeals case PC-2021-1348<sup>1</sup>. This case is not a proper

---

<sup>1</sup> <https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=PC-2021-1348>

mechanism for challenging the Oklahoma Court of Criminal Appeals decision, and Mr. Patterson is simply seeking an end-run around this Court and the State Court's prior rulings.

If this Court grants the motion to dismiss, the motion to intervene is moot. Further, the City has not exercised Major Crimes Act jurisdiction over homicides, and this case therefore does not relate to Mr. Patterson's case.

### **CONCLUSION**

This Court should dismiss the claims and requested relief against all parties as argued by the Defendants in the Motion to Dismiss on the basis of the abstention doctrines. In the alternative, this case should be stayed pending the OCCA's decision in *Stitt*, which would be immediately appealable to the United States Supreme Court, a decision from which would moot this case and be binding on all parties.

Respectfully Submitted,

CITY OF TULSA,  
a municipal corporation

JACK C. BLAIR,  
City Attorney

BY:



Becky M. Johnson, OBA #18282  
Senior Assistant City Attorney  
Kristina L. Gray, OBA #21685  
Litigation Division Manager  
City Hall, One Technology Center  
175 East Second Street, Suite 685  
Tulsa, Oklahoma 74103  
(918) 596-7717 Telephone  
(918) 596-9700 Facsimile

CERTIFICATE OF MAILING

I, Becky Johnson, hereby certify that on the 18th day of June, 2024, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants, and mailed the document to Mr. Crenshaw:

Todd Kim  
Cody McBride  
Hillary Hoffman  
United States Department of Justice  
Environment & Natural Resources Division  
Indian Resources Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
Cody.mcbridge@usdoj.gov  
Hillary.hoffman@usdoj.gov

Riyaz A. Kanji  
David A. Giampetroni  
Kanji & Katzen, PLLC  
P.O. Box 3971  
Ann Arbor, MI 48106  
rkanji@kanjikatzen.com  
dgiampetroni@kanjikatzen.com

and

Geraldine Wisner  
Attorney General  
Muscogee (Creek) Nation  
P.O. Box 580  
Okmulgee, OK 74447  
gwisner@mcnag.com


O. Joseph Williams  
O. Joseph Williams Law Office, PLLC  
The McCulloch Building  
114 North Grand Avenue, Suite 520  
P.O. Box 1131  
Okmulgee, OK 74447  
jwilliams@williamslaw-llc.com

Philip H. Tinker  
Kanji & Katzen, PLLC  
811 1st Avenue, Suite 630

Seattle, WA 98104  
ptinker@kanjikatzen.com

Stephanie R. Rush  
Kanji & Katzen, PLLC  
P.O. Box 2579  
Sapulpa, OK 74067  
vrush@kanjikatzen.com

Brian Wayne Patterson #265446  
JCCC  
216 N. Murray Street  
Helena, OK 73741

  
Becky Johnson